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May 30, 1996

Mr. William F. Caton, Acting Secretary
Federal Communications Commission
Room 222
1919 M Street, N.W.
Washington, D.C. 20554

RE: Reply Comments of Motorola Satellite Communications, Inc. and U.S. Leo Services, Inc. in the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 (CC Docket No. 96-98)

Dear Mr. Caton:

On behalf of Motorola Satellite Communications, Inc. and U.S. Leo Services, Inc., please find enclosed for filing an original and twelve (12) copies of their Reply Comments in the above-captioned matter.

We request that you place this pleading in the appropriate public file and forward to the Common Carrier Bureau for its consideration.

Please date stamp and return our copy marked "Duplicate Original" to the messenger. If there are any questions concerning this filing, please do not hesitate to contact the undersigned.

Respectfully submitted,

Philip L. Malet
Brent H. Weingardt
Counsel for Motorola Satellite
Communications, Inc. and
U.S. Leo Services, Inc.

Enclosure

ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	
Implementation of the Local Competition Provisions in the Telecommunications Act of 1996	**CC Docket No. 96-98**

REPLY COMMENTS OF MOTOROLA SATELLITE COMMUNICATIONS, INC. AND U.S. LEO SERVICES, INC.

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May 30, 1996

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SUMMARY

Motorola Satellite Communications, Inc. ("Motorola") and U.S. Leo Serevices, Inc. ("Iridium North America" or collectively "MSC/INA") submit these reply comments in support of the Commission's tentative conclusion that space station and earth station licensees involved in the bulk distribution of satellite capacity are not "telecommunications carriers" required to provide interconnection in accordance with Section 251(a) of the Telecommunications Act of 1996

INA will be responsible for the bulk distribution of IRIDIUM System space segment capacity to service providers in the United States and Canada who, in turn, will provide IRIDIUM Mobile Satellite Services ("MSS") to the general public.

Congress has authorized the FCC to exclude bulk providers of space segment capacity from interconnection obligations through its definitions of "telecommunications carrier" and "telecommunications services." These definitions continue the statutory scheme first created by Congress in 1993 that permits the FCC to determine whether providers of fixed satellite and mobile satellite space segment capacity should be subject to CMRS and common carrier regulatory treatment. The definitions of "telecommunications service" and "common carrier" service are synonymous and permit the Commission to find that providers of bulk space segment capacity are neither telecommunications carriers nor common carriers.

Just three weeks ago, the Commission released its first interpretation of these statutory terms. In its AT&T-SSI Cable Order, the Commission concluded that AT&T's provision of bulk capacity in its digital submarine cable to other common

carriers did not make it a telecommunications carrier or otherwise require it to operate the cable facility on a common carrier basis. The Commission concluded that since AT&T had itself decided to limit its cable service to a restricted class of users -- in that case other common carriers who would in turn offer service to the general public -- it was not "effectively available to the general public" and therefore was not a "telecommunications service." The Commission also indicated that the proper focus for its analysis as to the appropriate regulatory treatment of a communications service is not what AT&T's customers will in turn do with the service, but the nature of the service offered by AT&T. INA's distribution of bulk IRIDIUM System space segment capacity should be accorded comparable treatment.

The FCC has repeatedly decided, both in the context of its Big and Little LEO rulemaking proceedings and in its MSS licensing decisions, to extend non-common carrier treatment to "any entity that sells or leases space segment capacity, to the extent that they are not providing CMRS directly to end users."[1/] Indeed, the Commission has expressly recognized that the IRIDIUM System will be marketed through a wholesale supplier of satellite transmission capacity to service providers through U.S. gateways and that this does not constitute common carriage or a CMRS offering.[2/]

1/ Implementation of Sections 3(n) and 332 of the Communications Act's Regulatory Treatment of Mobile Services, Second Report and Order, 9 FCC Rcd 1411, 1456-1457 (1994).

2/ Motorola Satellite Communications, Inc., 10 FCC Rcd 2268, 2272 (Int'l Bureau 1995).

Motorola and Iridium North America urge the Commission to conclude that the provision of Mobile-Satellite Service bulk space segment capacity is not a "telecommunications service" and therefore, is not subject to the interconnection obligations of Section 251 of the Telecommunications Act of 1996. The Commission should extend this finding both to the space station and earth station licensees who will participate in the bulk distribution of such space segment capacity.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	**CC Docket No. 96-98**
Implementation of the Local Competition Provisions in the Telecommunications Act of 1996	)	

REPLY COMMENTS OF MOTOROLA AND IRIDIUM NORTH AMERICA

I. INTRODUCTION

Motorola Satellite Communications, Inc. ("Motorola") and U.S. Leo Services, Inc. ("Iridium North America" or collectively "MSC/INA") submit these reply comments in the above-captioned proceeding.[1/] Motorola holds the space system license for the IRIDIUM® System, a global personal communications satellite system.[2/] Iridium North America is an IRIDIUM System authorized Gateway Operator that will be responsible for the bulk distribution of space segment capacity to service providers in the United States who, in turn, will provide IRIDIUM communications services to the general public.

In its Local Competition Notice, the Commission sought comment, inter alia, as to what entities would be subject to the requirements of Section 251(a) of the

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1/ Notice of Proposed Rulemaking, FCC 96-182, April 19, 1996 ("Local Competition Notice"); Erratum, Mimeo No. 62660, April 26, 1996; Order, DA 96-700, (Common Carrier Bureau, May 7, 1996).

2/ Motorola Satellite Communications, Inc., 10 FCC Rcd 2268 (Int'l Bureau 1995).

Telecommunications Act of 1996[3] as "telecommunications carriers." According to the Telecommunications Act, all "telecommunications carriers" are under an obligation to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers [4] and not to install network features, functions or capabilities that do not comply with requirements established elsewhere in the Telecommunications Act.[5]

The Commission has tentatively concluded in this Local Competition Notice that to the extent a carrier is providing local, interexchange or international basic services for a fee directly to the public "or to such classes of users as to be effectively available directly to the public," it is acting as a telecommunications carrier. It has sought comment on what carriers should be included under this definition.[6]

The Commission notes that Section 3(49) of the Telecommunications Act states that a telecommunications carrier shall be treated as a common carrier only to the extent that it is providing "telecommunications services", "except that the Commission shall determine whether the provision of fixed and mobile satellite service

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[3] Telecommunications Act of 1996, ("Telecommunications Act"), Public Law No. 104-104, 110 Stat. 56, to be codified at 47 U.S.C. § 251(a).

[4] 47 U.S.C. § 251(a)(1).

[5] 47 U.S.C. § 251(a)(2). This provision refers, in turn, to Section 255 of the Telecommunications Act, which requires that equipment and services be accessible to the disabled, and Section 256, which directs the Commission to promote interconnection of public telecommunications networks used to provide telecommunications services.

[6] Local Competition Notice at ¶ 245 (emphasis added).

shall be treated as common carriage."[7] The Commission goes on to explain that it has already concluded that both earth station and space station licensees in the Fixed-Satellite Service can choose to offer services on a non-common carrier basis. If fixed space segment capacity was offered to CMRS providers, the Commission indicated that it would apply public interest factors consistent with Section 332(c)(5) of the Communications Act of 1934, as amended, to determine whether such an offering should be treated as common carriage.[8]

As to the Mobile-Satellite Service ("MSS"), the Commission states that it has concluded that space station operators in the "Big LEO" MSS service can offer space segment capacity on a common carrier or non-common carrier basis. The Commission then tentatively concludes that it would continue to determine whether the provision of MSS is CMRS or Private Mobile Radio Service based on the same public interest factors listed under Section 332(c)(5) of the Communications Act.[9] The Commission does not specifically discuss the proposed regulatory treatment of fixed or mobile earth stations that are used for the bulk distribution of MSS space segment capacity. Finally, the Commission has sought comment on whether the new statutory definition of "telecommunications carrier" differs from "common carrier."[10]

Several commenters to this proceeding have suggested that the statutory language in the Telecommunications Act should be broadly interpreted to apply to all

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[7] Id. citing to 47 U.S.C. § 153(49).

[8] Local Competition Notice at ¶ 247.

[9] Id.

[10] Id.

carriers or otherwise do not distinguish between private carriers offering bulk services and common carriers. Motorola and Iridium North America, however, agree with the Commission's tentative conclusion that the regulatory classification of licensees providing MSS space segment on a bulk capacity basis should continue to be evaluated in accordance with its CMRS public interest guidelines. The Commission should also extend this treatment to MSS earth station licensees who similarly will provide bulk access to space segment capacity. Moreover, the Commission should conclude that the statutory definition of "telecommunications carrier" is the equivalent of "common carrier" or "common carriage" for the purpose of determining whether an entity is subject to the requirements of Section 251(a) of the Telecommunications Act.[11/]

This regulatory treatment is consistent with Congress' previous determination that bulk space segment providers need not be treated as CMRS providers or common carriers under Section 332(c)(5) of the Communications Act of 1934, as amended, as well as numerous Commission decisions implementing this statutory language. Moreover, just three weeks ago, the Commission interpreted the new statutory definitions of "telecommunications carrier" and "telecommunications services" to permit a bulk provider of digital submarine cable capacity to effectively limit

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11/ The Commission recognizes that its decision as to who qualifies as a "telecommunications carrier" for interconnection purposes under Section 251(a) of the Telecommunications Act will impact an entity's obligation to participate in universal service funding mechanisms under Section 254 of the Telecommunications Act. Local Service Notice at n.331. Motorola and Iridium North America have filed Reply Comments in the Joint Board's Universal Service rulemaking proceeding in CC Docket 96-45 on May 7, 1996. Those Reply Comments are consistent with the Reply Comments submitted herein.

the class of eligible users of its service and to offer bulk capacity to its cable services on a non-common carrier basis.[12/]

The Commission should conclude that neither Motorola, as a space station licensee, nor Iridium North America, as an earth station licensee, are "telecommunications carriers" providing "telecommunications services" to the extent they are providing bulk space segment capacity to authorized Iridium service providers.

II. BACKGROUND

Motorola has been licensed to construct, launch and operate a constellation of 66 low-Earth orbit ("LEO") satellites in the "Big LEO" MSS Service called the IRIDIUM® System. The system will provide two-way voice and data communications between hand-held mobile terminals virtually anywhere in the world and between such terminals and the Public Switched Telephone Network (PSTN).[13/] As the Commission has recognized, Motorola does not plan to provide these services directly to the public.

> Motorola will be a wholesale supplier of Iridium's transmission capacity to network operators or service providers through U.S. gateways. These entities may provide services to end users or sell capacity in bulk to other service providers, or both.[14/]

12/ AT&T Submarine Systems, Inc. Application For A License To land And Operate A Digital Submarine Cable System Between St. Thomas and St. Croix in the U.S. Virgin Islands, Cable Landing License, DA 96-719, (Int'l Bureau, May 8, 1996) ("AT&T-SSI Cable Order").

13/ Motorola Satellite Communications, 10 FCC Rcd 2268 (Int'l Bureau 1995).

14/ Id. at 2268.

Iridium North America will be the exclusive IRIDIUM® System Gateway operator in both the United States and Canada. This Gateway will provide the interface between the satellite constellation and terrestrial communications systems. Iridium North America will, in turn, sell space segment capacity in bulk to unaffiliated service providers. As such, it will be responsible for contracting with these service providers who will purchase the right to sell bulk IRIDIUM services to the general public. Iridium North America will also serve as the exclusive provider of subscriber handsets and other mobile or fixed subscriber earth stations in accordance with a blanket earth station authorization.

The IRIDIUM service providers will represent the primary interface with the subscribing public. MSC/INA expects that many existing cellular (or other CMRS) carriers will act in this capacity and offer IRIDIUM services as a complement to their existing cellular services. These service providers will also be the collection point for charges for IRIDIUM® System use by the public, with revenues being shared with the IRIDIUM® System space segment provider, the authorized Gateway operator (Iridium North America) and the various service providers.

III. BULK PROVIDERS OF SATELLITE SPACE SEGMENT CAPACITY ARE NOT "TELECOMMUNICATIONS CARRIERS" SUBJECT TO THE INTERCONNECTION REQUIREMENTS OF THE 1996 TELECOMMUNICATIONS ACT

Several of the initial commenters suggest that the statutory definition of a "telecommunications carrier" should be broadly construed when in applying the Telecommunications Act's interconnection requirements while others discuss the term

without distinguishing between bulk services providers and common carriers."[15] These comments ignore the clear intent of Congress to exclude bulk service providers in general, and fixed satellite and mobile satellite bulk service providers in particular, from this definition to the extent these providers do not provide service directly to the public. Exclusion of bulk satellite capacity providers is wholly consistent with their current treatment under Section 332 of the Communications Act. Nothing in the statutory language or the legislative history of the Telecommunications Act reflects a congressional intent to distinguish or limit the Commission's current discretion to exclude bulk space segment providers from common carrier status or to conclude that these providers are not telecommunications carriers. These comments also ignore several FCC decisions which treat the bulk -- or wholesale -- provision of satellite space segment capacity as private carriage.

A. Congress Has Expressly Authorized The Commission To Exclude Bulk Space Segment Providers From Its Definitions of "Telecommunications Carrier" and "Telecommunications Services"

Congress has determined that "each telecommunications carrier has the duty'"' to interconnect with other telecommunications carriers.[16] The definitions of

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[15] See, e.g., Comments of the Louisiana Public Service Commission (May 16, 1996) at 20-23 (Louisiana's definition of a telecommunications service provider -- any person offering or providing telecommunications for compensation for monetary gain -- is consistent with the Telecommunications Act's definition of "telecommunications carrier); Comments of U.S. West, Inc. (May 16, 1996) at 45; Comments Citizen's Utility Company (May 16, 1996) at 8 n.6; Comments of MobileMedia Communications, Inc. (May 16, 1996) at 9; Comments of MFS Communications Company, Inc. (May 16, 1996)

[16] Section 251(a) of the Telecommunications Act.

these terms in the Telecommunications Act, however, reveal that the provision of wholesale satellite space segment capacity should be excluded from such obligations.

In defining a "telecommunications carrier," Congress included language that reflects a clear intent to exclude satellite space segment providers:

> "A telecommunications carrier shall be treated as a common carrier under this Act only to the extent that it is engaged in providing telecommunications services, except that the Commission shall determine whether the provision of fixed and mobile satellite service shall be treated as common carriage.[17/]

The statutory definition of "telecommunications service" further demonstrates that Congress intended to exclude wholesale communications offerings from the services subject to the new interconnection obligations.

> The term "telecommunications service" means the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used."[18/]

B. The Statutory Definition Of A Telecommunications Carrier Is Synonymous With The Existing Definition Of A Common Carrier

Congress also intended these statutory definitions to be synonymous with the generally accepted definition of common carriage, and authorized the Commission to continue to determine on a case-by-case basis whether providers of bulk satellite space segment capacity are subject to common carrier regulation.[19/] When the

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17/ Section 3(49) of the Telecommunications Act (emphasis added).

18/ Section 3(51) of the Telecommunications Act (emphasis added).

19/ See, NARUC I, 525 F.2d 630, 641 (D.C. Cir. 1976), where the Court defined an

(continued ...)

Commission concludes that a bulk provider of satellite space segment capacity is not a common carrier, this decision necessarily encompasses a finding that the provider is not a telecommunications carrier and is not providing telecommunications services.

Nothing in the Telecommunications Act or its legislative history reveals a congressional intent to make a distinction between "telecommunications service" and "common carriage." In fact, the statutory definition of "telecommunications service" is completely consistent with the currently-accepted meaning of common carriage.

Moreover, the Telecommunications Act's legislative history plainly reflects such an interpretation. The House explanatory language in the Conference Report defines "telecommunications service" as "services and facilities offered on a common carrier basis...."[20/] The Senate explanatory language, ultimately adopted by the Conference Committee, first reiterates that the new statutory definition of "telecommunications carrier" is intended to amend the Communications Act "to

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19/ (... continued)
essential element of common carriage as an undertaking by a carrier "to carry for all people indifferently." The Court alluded to the FCC's definition of common carriage with approval.

> [T]he fundamental concept of a communications common carrier is that such a carrier makes a public offering to provide, for hire, facilities by wire or radio whereby all members of the public who choose to employ such facilities may communicate or transmit intelligence of their own design and choosing.

NARUC I at 641 n.58.

See also, NARUC II, 533 F.2d 601, 608-609 (D.C. Cir. 1976) (A communications common carrier holds itself out indifferently to serve all potential users and these users transmit intelligence of their own choosing).

20/ H.R. No. 458, 104th Cong., 2nd Sess. 115 (1996).

explicitly provide that a 'telecommunications carrier' shall be treated as a common carrier,... but only to the extent it is engaged in providing telecommunications services."[21] The Senate language then adds context to the new statutory definition of "telecommunications service" by noting that this definition is "intended to include commercial mobile service ("CMS") ... to the extent [it is] offered to the public or to such classes of users as to be effectively available to the public."[22]

Just three weeks ago, the Commission interpreted these definitions in the Telecommunications Act in a similar manner. In its AT&T-SSI Cable Order, the Commission found that AT&T's provision of bulk capacity in its digital submarine cable did not make it a "telecommunications carrier" nor require it to operate the facility on a common carrier basis.[23] In that case, the Commission was asked to determine whether AT&T's provision of bulk capacity to one or more common carriers [who in turn would directly serve the public] make its cable system's capacity "effectively available directly to the public," subjecting the cable system to treatment as a "telecommunications carrier."[24] The Commission concluded that a bulk capacity provider could, by its own decision to limit the types of customers it will serve, avoid treatment as a telecommunications carrier.

21/ Id. at 114.

22/ Id.

23/ AT&T-SSI Cable Order at ¶ 2.

24/ Id. at ¶ 7.

The Commission first applied Section 332 of the 1993 Budget Act to determine whether the type, nature and scope of users authorized to access the AT&T cable effectively limited the public availability of the service.

> As in the CMRS context, we believe that whether a service is effectively available to the public depends on the type, nature and scope of users for whom the service is intended and whether it is available to a 'significant restricted class of users.' AT&T-SSI, as owner of the St. Thomas-St. Croix cable systems, will make available bulk capacity in its system to a significantly restricted class of users, including common carrier cable consortia, common carriers and large businesses. Potential users are further limited because only consortia, common carriers, and large businesses with capacity and interconnecting cables or other facilities and, in many cases, operating agreements with foreign operators, will be able to make use of the cable as a practical matter.[25/]

The Commission then rejected claims that because AT&T's cable system customers will, in turn, use the bulk capacity to provide service to the public, AT&T will be making services effectively available directly to the public. "Such an interpretation is contrary to the plain language of the statute by focusing on the service offerings AT&T-SSI's customers may make rather than what AT&T-SSI will offer.... AT&T-SSI, by conveying bulk cable capacity, is not providing a service that is effectively available to the public."[26/]

Iridium North America's proposed distribution of bulk space segment capacity is consistent with AT&T's distribution scheme, and accordingly, it should not be treated as a telecommunications carrier. In the United States, Iridium North America

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[25/] Id. at ¶ 25 citing to the test of public availability at Regulatory Treatment of Mobile Services, Second Report and Order, 9 FCC Rcd 1411, 1440, 1509 (1994).

[26/] Id. at 26 (emphasis added).

is under contract with Iridium to be the Gateway operator. The Gateway operator will, in turn, provide bulk distribution of the IRIDIUM System space segment only to service providers who will provide MSS service to the general public. These service providers will, in all likelihood, be CMRS providers regulated as common carriers.[27/]

C. A Determination That Bulk Providers Of Satellite Space Segment Capacity Are Not Telecommunications Carriers Is Consistent With Congress' Provision For Such Treatment Under Section 332(c)(5) of The Communications Act

In 1993, Congress specifically authorized the Commission to determine whether satellite space segment providers are common carriers. The Telecommunications Act does not diminish the Commission's discretion to make such determinations, nor does it require the Commission to revise its previous decisions as to fixed and mobile satellite service providers.

Section 332 of the Communications Act established a new regulatory regime for for-profit providers of mobile services to the public -- the Commercial Mobile Service ("CMS" or "CMRS") -- and required that such providers be treated as common carriers.[28/] The Act defines CMRS as "any mobile service that is provided for profit and

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[27/] Service to the public in the United States will be provided only through authorized service providers such as cellular entities under contract with Iridium North America to purchase bulk space segment and offer it to the public. The Commission recognized in its Big LEO Report and Order that when MSS services are ultimately offered to the public, they would be subject to CMRS and common carrier regulation. Big LEO Report and Order at 6002. These CMRS providers will also be subject to Section 251(a). Based upon the Commission's ultimate determination as to the interconnection obligations of CMRS providers, these CMRS companies would be subject to those obligations.

[28/] 47 U.S.C. § 332(c)

makes interconnected service available to the public or to such classes of eligible users as to be available to a substantial portion of the public".[29/]

However, at Section 332(c)(5) of the Act, Congress specifically provided the Commission with broad discretion to exempt providers of space segment capacity from CMRS or common carrier treatment.

> Nothing in this section shall prohibit the Commission from continuing to determine whether the provision of space segment capacity by satellite systems to providers of commercial mobile services shall be treated as common carriage.[30/]

The Commission has concluded in its CMRS and Big and Little LEO MSS rulemakings that bulk satellite space segment providers need not be treated as common carriers. Moreover, the Commission has determined that MSS providers that choose to provide bulk space segment capacity to CMRS providers should not be treated as CMRS or common carriers. Most significantly, the Commission has made a specific finding to this effect for the IRIDIUM System.

First, in implementing Section 332(c)(5) of the Communications Act, the Commission concluded that it would extend non-common carrier treatment to "any entity that sells or leases space segment capacity, to the extent that they are not

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[29/] 47 U.S.C. § 332(d).

[30/] 47 U.S.C. § 332(c)(5). The legislative history reflects a congressional intent to allow the FCC to continue its individualized determinations as to whether the provision of space segment capacity to providers of CMRS is common carriage. Congress noted, however, that "the provision of space segment capacity directly to users of commercial mobile services shall be treated as common carriage." Conference Report to the Omnibus Budget Reconciliation Act of 1993, H. R. Rep. No. 213, 103rd Cong., 1st Sess. 494 (1993) reprinted in 1993 U.S.C.C.A.N. 1088, 1183.

providing CMRS directly to end users."[31] At Section 20.9(a)(10) of its Rules, the Commission authorized this treatment for both the space station provider of bulk space segment capacity and other entities in the chain of distribution.

> MSS will be treated as common carriage service and regulated as CMRS if it involves the provision of CMRS (by licensees or resellers) directly to end users, except that mobile satellite licensees and other entities that sell or lease space segment capacity, to the extent that it does not provide CMRS directly to end users, may provide space segment capacity to CMRS providers on a non-common carrier basis, if so authorized by the Commission.[32]

The Commission went on to apply this rule and its interpretation of Section 332(c)(5) of the Communications Act to MSS system operators. In its Big LEO Report and Order, the Commission concluded that it may exercise its discretion to treat as non-common carriers (or private carriers) Big LEO space station licensees who offer space segment capacity to resellers or other entities that then offer CMRS to end users.[33] In the context of non-voice, non-geostationary MSS space station licensees

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[31] Implementation of Sections 3(n) and 332 of the Communications Act's Regulatory Treatment of Mobile Services, Second Report and Order. 9 FCC Rcd 1411, 1456-1457 (1994) (emphasis added).

[32] 47 C.F.R. § 20.9(a)(10) (emphasis added).

[33] Amendment of the Commission's Rules to Establish Rules as Policies Pertaining to a Mobile Satellite Service in the 1610-1626.5/2483.5-2500 MHz Frequency Bands, Report and Order, 9 FCC Rcd 5936, 6002 (1994). In addition to its interpretation of the statutory CMRS provisions, the Commission relied extensively on the analysis of the NARUC I Court. Id. at 6002-6004.

("Little LEOs"), the Commission also concluded that it would allow these licensees to provide access to their systems by CMRS providers on a non-common carrier basis.[34/]

The Commission has applied those policies to the IRIDIUM System and to other proposed Big LEO MSS systems, and has found that they will not be offering CMRS or common carrier services. In its authorization to Motorola for the IRIDIUM® System, the Commission recognized that Motorola did not plan to provide space segment capacity directly to end users, and therefore need not operate as a common carrier.[35/] The Commission based this determination on its discretion under Section 332(c)(5) of the Communications Act to treat as private carriers Big LEO space station licensees that will offer space segment capacity to resellers or others who then would offer CMRS to the public.[36/] Similarly, the Commission has determined that TRW and Loral/Qualcomm may offer MSS space segment capacity on a non-common carrier basis.[37/]

These repeated Commission grants of non-common carrier treatment to bulk providers of space segment capacity reflect the clear intent of Congress to treat such providers as private carriers. Consistent with these past determinations, the

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[34/] Amendment of the Commission's Rules to Establish Rules and Policies Pertaining to a Non-Voice, Non-Geostationary Mobile-Satellite Service, Report and Order, 8 FCC Rcd. 8450, 8456 (1993). The Commission later authorized Orbcomm to sell bulk space segment to resellers on a non-common carrier basis. Orbital Communications Corporation, 9 FCC Rcd 6476 (1994).

[35/] Motorola Satellite Communications, Inc., 10 FCC Rcd 2268, 2272 (Int'l Bureau 1995).

[36/] Id.

[37/] TRW, 10 FCC Rcd 2263, 2266 (Int'l Bureau 1995); Loral/Qualcomm, 10 FCC Rcd 2333, 2336 (Int'l Bureau 1995).

Commission should similarly find that bulk space segment providers are neither "telecommunications carriers" nor providing "telecommunication services" and thus not subject to the interconnection requirements of Section 251(a) of the Telecommunications Act. Furthermore, consistent with the Commission's past interpretations of Section 332 of the Communications Act and Section 20.9(a)(10) of its Rules, the Commission should expressly state that earth station operators who participate in the bulk distribution of satellite space segment are not telecommunications carriers.

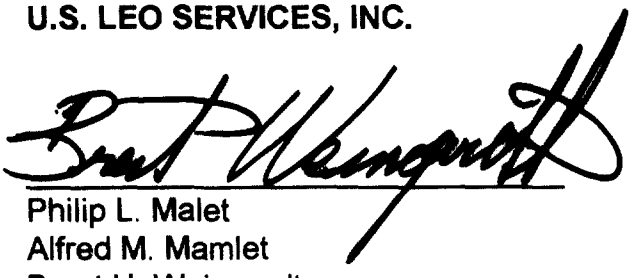
IV. CONCLUSION

Space station and earth station licensees that provide MSS bulk space segment capacity are not telecommunications carriers subject to the interconnection obligations established by the Telecommunications Act of 1996. This conclusion is consistent with the definition of a "telecommunications carrier" as set forth at Sections 3 and 251(a) of the Telecommunications Act as well as the existing statutory scheme of Section 332(c)(5) of the Communications Act. The Commission's most recent interpretation of the Telecommunications Act indicates that such providers of bulk capacity to a "significantly restricted class of eligible users" are not telecommunications carriers.

Respectfully submitted,

MOTOROLA SATELLITE COMMUNICATIONS, INC.

U.S. LEO SERVICES, INC.



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May 30, 1996

CERTIFICATE OF SERVICE

I, Brent H. Weingardt, do hereby certify that a copy of the foregoing **Reply Comments of Motorola Satellite Communications, Inc. and U.S. Leo Services, Inc.** has been sent, via first class mail, postage prepaid, (or as otherwise indicated) on this 30th day of May, 1996 to the following:

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* Commissioner James H. Quello
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